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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DONALD FAISON,

Plaintiff,

- against-

LEONARD ST. LLC,
c/o JEAN GEORGES MANAGEMENT,

Defendant.

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08 Civ. 2192 (PKC)(DFE)

MEMORANDUM AND ORDER

DOUGLAS F. EATON, United States Magistrate Judge.

1. By Order dated March 14, 2008, District Judge P. Kevin Castel advised Mr. Faison about Rule 4(m) of the Federal Rules of Civil Procedure and warned that the lawsuit will be dismissed if "service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint [i.e., by July 3, 2008]."

2. By Order of Reference (also dated March 14) Judge Castel referred this case to me for general pre-trial supervision.

3. I direct Mr. Faison to complete all action needed for formal service of the summons and complaint upon the defendant. For this purpose, plaintiff must fill out the Form USM 285 and forward it (along with the Summons and the Complaint) to the U.S. Marshal's Office, which will serve the defendant. If plaintiff has any questions, he should contact the Pro Se Office.

4. If Mr. Faison does not, by July 3, 2008, send to me proof of service or good reasons for failure to make service, then I will recommend that the District Judge dismiss this lawsuit.

5. As soon as the defendant has been served, plaintiff must write to me to tell me that the defendant has been served. I will then schedule an Initial Case Management Conference. At that conference, I will ask both plaintiff and defendant whether they are willing to participate in our free mediation program. I am enclosing, for Mr. Faison, a 3-page document describing the mediation program.

6. Mr. Faison is required to give prompt written notice, to both the Pro Se Office and my chambers, about any change of address. Failure to do may result in a dismissal of the lawsuit. Mr. Faison should write to my chambers, listing the docket number

08 Civ. 2192 (PKC)(DFE) and telling me his telephone number, if any.

7. The address of the Pro Se Office is Room 230, United States Courthouse, 500 Pearl Street, New York, N.Y. 10007, and their telephone number is (212) 805-0175. They can provide assistance in connection with the Court's procedures, but they cannot give legal advice.

DOUGLAS F. EATON
United States Magistrate Judge
500 Pearl Street, Room 1360
New York, New York 10007
Telephone: (212) 805-6175
Fax: (212) 805-6181

Dated: New York, New York
March 19, 2008

Copies of this Memorandum and Order are being mailed to:

Donald Faison
69 Williams Avenue, #4
Jersey City, NJ 07304
(with a 3-page document describing the mediation program)

Pro Se Office
Room 230, U.S. Courthouse
500 Pearl Street
New York, NY 10007

Hon. P. Kevin Castel

PRO SE OFFICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DANIEL PATRICK MOYNIHAN UNITED STATES COURTHOUSE
500 PEARL STREET, ROOM 230
NEW YORK, NEW YORK 10007

J. MICHAEL McMAHON
CLERK OF COURT

INFORMATION REGARDING MEDIATION OF AN EMPLOYMENT DISCRIMINATION ACTION

WHAT IS MEDIATION?

Mediation involves a meeting between the plaintiff, defendant, each party's counsel, and a neutral third party (the mediator), in an attempt to reach a voluntary, negotiated resolution. Mediation provides an opportunity to discuss the issues raised in the complaint, to determine the main concerns, and to speak calmly and openly about the important issues. The purpose of mediation is to amicably resolve the dispute by reaching a mutually satisfactory agreement resolving all or part of the dispute by carefully exploring not only the relevant evidence and law, but also the parties underlying interests, needs and priorities. The mediation is not for evaluating the merits of the parties' positions or determining who is "right."

Congress passed the Alternative Dispute Resolution (ADR) Act of 1998, Pub. L. No. 105-315, 112 Stat. 2993 (1998), making it possible for federal courts to offer mediation as a way for a dispute to be settled outside of the courtroom. See 28 U.S.C. § 651. *Pro se* cases are generally not eligible for mediation pursuant to Local Civil Rule 83.12 of this Court. In 1999, however, the Court launched a program to provide volunteer lawyers for *pro se* plaintiffs bringing employment discrimination cases under the Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e- 2000e-17 (discrimination based upon race, color, gender, religion and national origin), the Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621-34 (discrimination based upon age), Title I of the Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 1242-17 (discrimination based on disability or perceived disability). Upon the signed consent of the parties, a judge can appoint a lawyer to represent a *pro se* litigant and refer the employment discrimination case to mediation.

ADVANTAGES OF MEDIATION

✓ SAVES TIME - Mediation reduces the delays caused by the increasing number of cases being filed with the courts. ADR is a great way to avoid lengthy investigations and litigation processes, and arrive at a quick resolution.

✓ AN OPPORTUNITY TO MEET WITH AN ATTORNEY - An attorney is assigned to the case to review the *pro se* litigant's complaint. S/he can discuss with the plaintiff whether or not to settle and if so, for how much money. Participation in the mediation process does not preclude a *pro se* party from later seeking appointment of counsel from the Court's "traditional" *pro bono* panel.

✓ FAIR - The third party mediator does not have a direct interest in the case, and therefore s/he can conduct sessions in an unbiased manner, giving both parties time to explain their situation and perspective.

✓ CONFIDENTIAL - Any information disclosed during mediation cannot be used against either party in the litigation and will not be revealed to anyone, including the Judge assigned to the case.

✓ LESS FORMAL SETTING - The high success rates of mediation can be attributed to a more flexible and comfortable setting for participants to explain their point of view.

✓COST EFFECTIVE - Mediation is FREE.

WHAT TO EXPECT: THE PROCESS OF MEDIATION

Getting Started ➔ The first step in the process is to file an employment discrimination complaint with the Court. Once the case is opened and assigned a docket number and judge, the plaintiff must serve a copy of the summons and of the complaint upon the defendant in accordance with Rule 4 of the Federal Rules of Civil Procedure. At the initial pretrial conference or anytime thereafter, the parties may express their interest in mediation to the Court, or the district judge or magistrate judge may refer the case to mediation if both parties agree and sign the consent form.

Once the parties have consented to the mediation, the *Pro Se* Office will find a volunteer attorney for the plaintiff. The Court will then issue an order appointing a specific attorney to the plaintiff for purposes of the mediation only, and the parties will be sent a copy of the order, which includes the attorney's address and phone number. The plaintiff and attorney will then arrange to meet before the mediation session and discuss the case and ideal outcome of the mediation. Mediation sessions generally take place at the courthouse.

The Role of the Mediator ➔ The Mediator is a neutral third party who directs settlement discussions. The Mediator is an experienced lawyer who has been trained and certified by the Court. S/he serves to improve communication between the parties, to assist each party in understanding their opponent's position and to facilitate discussion of the key issues. S/he conducts the meetings, defines the issues and suggests the possibilities of resolution. The Mediator does not make decisions, issue findings or determine who is right and wrong. The Mediator is disqualified as a witness, consultant, or attorney in any future action relating to the dispute.

Results ➔ The primary goal of mediation is to communicate quickly and effectively each side of the case and reach a resolution. Mediation concludes when the parties reach an agreeable resolution for some or all of the issues. If a resolution is reached, the parties will sign a settlement agreement, which is a binding contract, and the litigation will be dismissed. If the mediator decides that resolution is impossible, the case will return to the litigation process and the litigant will proceed .

REMEMBER, THE ATTORNEY APPOINTED TO REPRESENT A *PRO SE* LITIGANT IN MEDIATION IS NOT RESPONSIBLE FOR THE CASE ONCE MEDIATION HAS ENDED.

If you have any further questions regarding mediation, please contact the *Pro Se* Office at (212)805-0175.